

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

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2015 JUL 10 P 12:44

Marlon Tyrone Bannister,

Plaintiff,

v.

Summerville Police Department,
Dorchester County Detention Center,
Bruce Owens, and Terry Vandoran

Defendants.

C/A No.: 2:15-0785-RMG

ORDER

This matter is before the Court on the Report and Recommendation (“R & R”) of the Magistrate Judge recommending that the Court dismiss the Plaintiff’s action with prejudice for lack of prosecution and failure to comply with the Court’s orders. (Dkt. No. 19). For the reasons set forth below, the Court agrees with and ADOPTS the R & R as an order of this Court.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1) (2012). Here, however, because no objection has been made, this Court “must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee note). Moreover, in the absence of specific objections to the R & R, the Court need not give any explanation for adopting the Magistrate Judge’s analysis and recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983).

Despite warnings from the Magistrate Judge advising Plaintiff that this action would be subject to dismissal if he failed to bring this case into proper form or failed to keep the Clerk of Court advised of any address changes, Plaintiff has failed to do so. When Plaintiff filed this action, he was specifically instructed as follows:

You are ordered to always keep the Clerk of Court advised **in writing**...if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this order, you fail to meet a deadline set by this Court, **your case may be dismissed for violating this order**. Therefore, if you have a change of address before this case is ended, you must comply with this order by immediately advising the Clerk of Court in writing of such change of address...Your failure to do so will not be excused by the Court. (emphasis added)

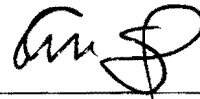
(Dkt. No. 7 at 3). The Proper Form Order further advised Plaintiff that he must submit a proper summons form that “provide[s] a complete name and a full address where Defendants can be served pursuant to Rule 4 of the Federal Rules of Civil Procedure.”¹ (Dkt. No. 7 at 2). Plaintiff did not bring the case into proper form by the Court’s deadline.

On May 21, 2015, a second Proper Form Order was mailed to Plaintiff. (Dkt. No. 13). However, Plaintiff’s copy of the Court’s May 21, 2015 Order was returned to the Clerk of Court on June 8, 2015, with the envelope being marked “Return to sender, not here.” (Dkt. No. 16). Similarly, Plaintiff’s copy of the Court’s R & R (Dkt. No. 19) was mailed on June 19, 2015, and was returned to the Clerk of Court on July 6, 2015, with the envelope being marked “Return to sender, no longer here” as well as “unable to forward.” (Dkt. No. 21). Accordingly, the Court agrees with the Magistrate Judge that Plaintiff has failed to comply with the Court’s Order (Dkt. No. 7), and as a result neither the Court nor the Defendants have any means of contacting him concerning his case.

¹ This April 2, 2015 Order was not returned to the Clerk of Court, and Plaintiff presumably received it.

Therefore the District Court **ADOPTS** the Magistrate Judge's R & R, (Dkt. No. 19), as and order of this Court. Accordingly, this action is **DISMISSED** with prejudice pursuant to Fed. R. Civ. P. 41(b).

AND IT IS SO ORDERED



Richard Mark Gergel
United States District Court Judge

July ¹², 2015
Charleston, South Carolina